

# **Exhibit D**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 14-22147-rdd  
ORRIN S. ANDERSON, . Chapter 7  
Debtor. .  
• .  
ORRIN S. ANDERSON, on behalf. . Adv. Proc. 15-08214-rdd  
of himself and all others .  
similarly situated, .  
aka ORRIN ANDERSON, .  
aka ORRIN SCOTT ANDERSON, .  
Plaintiff, .  
v. .  
CREDIT ONE BANK, N.A. and . 300 Quarropas Street  
CREDIT ONE FINANCIAL, . White Plains, NY 10601  
Defendants. . Thursday, October 12, 2017  
10:40 a.m.  
• .

TRANSCRIPT OF ADVERSARY PROCEEDING: 15-08214-rdd ANDERSON V.  
CREDIT ONE BANK, N.A. ET AL, MOTION TO APPROVE CLASS  
CERTIFICATION AND TO APPOINT CLASS COUNSEL;  
ADVERSARY PROCEEDING: 15-08214-rdd ANDERSON V. CREDIT ONE  
BANK, N.A. ET AL PLAINTIFF'S MOTION TO CERTIFY THE CLASS;  
ADVERSARY PROCEEDING: 15-08214-rdd ANDERSON V. CREDIT ONE  
BANK, N.A. ET AL MOTION TO STRIKE  
BEFORE THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES CONTINUED.

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1 refused to change the credit reports.

2 There are obviously many other creditors that know  
3 the law and comply with it. Credit One chose not to do so.  
4 Credit One even to today and argued yesterday in the Second  
5 Circuit that a charge-off is an accurate -- an accurate  
6 characterization of the status of the debt despite the fact  
7 that the debt has been discharged in bankruptcy.

8 We think it's very clear under the Spokeo cases and  
9 their progeny that we don't have to prove -- I mean, Strubel  
10 clearly says, as Spokeo does, that I don't have to prove what  
11 Mr. Tomback said I haven't proved, which is which person lost  
12 their house, which person didn't -- couldn't get credit to buy  
13 a car. There may be people who have those allegations, and if  
14 they want to collect on those allegations, they can remove --

15 THE COURT: Opt out.

16 MR. CARPINELLO: Opt out. I'm sorry, thank you.  
17 They can opt out of the class and they can get those additional  
18 damages. We're not asking for those damages class-wide. We're  
19 asking for some damage remedy for the fact that every single  
20 person in the class for whom an injunction was entered, they  
21 violated the -- that's default that's been established. They  
22 intentionally violated injunction for their protection.  
23 They've suffered harm by virtue of that. And clearly, under  
24 the Strubel standard, this -- even a, quote, "procedural  
25 irregularity" establishes harm if there's a substantial risk of

1 harm. And clearly there's a risk of harm. Ms. Watanabe was  
2 asked, you know --

3 THE COURT: Can I move to damages as opposed to harm  
4 for a second?

5 MR. CARPINELLO: Yes, absolutely.

6 THE COURT: Except for the people who paid and those  
7 who opt out, you're proposing that the damages would be a flat  
8 number calculated as against -- or by analogy to statutory  
9 damages for incorrect credit reporting under the --

10 MR. CARPINELLO: Yes.

11 THE COURT: -- FCRA. And that clearly could be a  
12 basis for a settlement. But when you're forcing -- when you  
13 are imposing a damages remedy on a defendant, how does one come  
14 up with such a number?

15 MR. CARPINELLO: It's exactly the same way that a  
16 jury would come up with a number where there's defamation per  
17 se. Someone, for example, says -- you know, defames a lawyer  
18 and says, you know, well, he committed malpractice in three  
19 cases. That's defamation per se. The lawyer bringing the case  
20 doesn't have to show I lost four clients because of the  
21 defamation. The lawyer comes in and establishes that there was  
22 defamation, and the jury assesses -- makes a determination  
23 based upon as -- just experiences in the community, what's an  
24 appropriate number for the fact that incorrect information was  
25 told about this particular lawyer? It doesn't have to be --

1 you don't have to put in any evidence to show that lawyer lost  
2 three clients or how many other clients, or his income was this  
3 this year and this next year.

4                   The jury simply determines what's an appropriate  
5 number based upon the fact that this was a harmful statement  
6 made about the lawyer, and they assess a number. Doesn't have  
7 to be geared to particular out-of-pocket loss. And that's  
8 exactly what you can do in a case where everybody in the class  
9 has inaccurate, derogatory information told about them to third  
10 parties. What's an appropriate number?

11                  And the case was very clear -- none of the cases we  
12 cited are rebutted by Mr. Tomback -- that in assessing what's  
13 an appropriate damage remedy, you can look at analogous  
14 statutory damages established by Congress. Congress has said  
15 what's an appropriate -- what -- we're going to pick a number  
16 that we think is appropriate for the fact that these credit  
17 reports are inaccurate. And you can use that analogy because  
18 that's the harm that they suffered, an inaccurate -- I mean,  
19 they violated an injunction. It's much more serious than a --  
20 this case is much more serious than an FCRA case because in  
21 FCRA cases, you know, there's inaccurate information, there's  
22 wilfully don't fix inaccurate information. They did more than  
23 that. They violated a discharge injunction for the purpose of  
24 collecting a debt. That's established by the default.

25                  But at least it gives you a yardstick by which you

1 MR. CARPINELLO: It's compensate.

2 THE COURT: -- I don't know what. I -- a general  
3 penalty for -- I think it is a penalty. I mean, I don't know  
4 how you --

5 MR. CARPINELLO: Well, it can be compensatory damages  
6 for an intangible harm --

7 THE COURT: Right.

8 MR. CARPINELLO: -- or punitive damages, which have  
9 some -- what the courts call mild punitive damages --

10 THE COURT: But I understand --

11 MR. CARPINELLO: -- for a violation of the  
12 injunction.

13 THE COURT: There's some -- I understand. Some  
14 courts refer to mild punitive damages, like the Biery case that  
15 you cited.

16 MR. CARPINELLO: I'm sorry, Your Honor, I was --

17 THE COURT: That's fine.

18 MR. CARPINELLO: The Biery case?

19 THE COURT: I understand that some courts in other  
20 circuits refer to mild punitive damages even after the problem  
21 has been corrected, like In re Biery 543 B.R. 267.

22 MR. CARPINELLO: Yes.

23 THE COURT: It was just referring to Sixth Circuit  
24 case law. But unless I'm missing something, I don't see that  
25 remedy available in the Second Circuit. I don't -- I mean,

1 it's not -- I think it's an extra category.

2 MR. CARPINELLO: Well, I -- as you said before,  
3 that's not the issue for today, I take it. I mean, I --

4 THE COURT: Well, I don't know. I think it's not the  
5 harm issue, but it may be an issue with respect to where we're  
6 going in the case. And I think I need to consider that type of  
7 issue when I, you know, consider whether questions of  
8 individual damage compilations will inevitably overwhelm  
9 questions common to the fact.

10 You're trying to get around that by saying, well, no,  
11 we're going to have a uniform damages request. In fact, that's  
12 the only damages we're restitution is uniform damages.

13 MR. CARPINELLO: Other than the disgorgement,  
14 correct.

15 THE COURT: Right. So -- but if the law doesn't  
16 permit that, then it seems to me we're just going to --  
17 certifying as to liability and maybe this small subclass, and  
18 as to attorneys' fees to be decided, and not anything else, and  
19 leave that up to individuals.

20 MR. CARPINELLO: Well, I'd like to be able to submit  
21 additional authority on the damages issue. I know we focused  
22 on harm in the briefing and whether --

23 THE COURT: Right.

24 MR. CARPINELLO: -- there was a harm established.  
25 But I'd like to be able to establish to Your Honor's

1 satisfaction. There's a lot of case law that supports the  
2 notion of damages that we would seek even outside of a  
3 settlement context.

4 THE COURT: Mild punitive damages.

5 MR. CARPINELLO: Certainly mild punitive damages, but  
6 also civil contempt that are compensatory -- civil contempt  
7 damages that are compensatory but don't have to be tethered to  
8 so-called --

9 THE COURT: Actual facts.

10 MR. CARPINELLO: -- out-of-pocket damages or --

11 THE COURT: Well, but I'm not talking -- I mean,  
12 look, clearly if someone -- if you were able to put someone on  
13 the stand to testify that anyone who got this type of response  
14 would have experienced, you know, at least \$200 of pain and  
15 suffering, I guess you could do that. But I don't think that's  
16 what you're seeking to do. You're basically just seeking to  
17 say I should pick a number, I think. Maybe I'm misreading what  
18 the relief you're seeking is.

19 MR. CARPINELLO: Based upon the fact that every  
20 single person in the class suffered the harm of having an  
21 inaccurate credit report reported to a third party.

22 THE COURT: But how would one go about deciding that  
23 number?

24 MR. CARPINELLO: And I -- again, you can apply the  
25 FCRA as a yardstick for the -- Congress made a determination